

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION II

CA06-911

March 14, 2007

INTERNATIONAL PAPER
COMPANY and SEDGWICK CMS
APPELLANTS
V.

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION
[NO. F502547]

JEFFERY HUNTER

APPELLEE

AFFIRMED

Appellant International Paper Company appeals a decision of the Workers' Compensation Commission holding that appellee Jeffrey Hunter suffered compensable injuries on March 3, 2005. Specifically, International Paper contends that there is a lack of substantial evidence supporting the Commission's opinion that Hunter suffered unexplained injuries. We disagree and affirm.

At the time of his accident, Hunter was only twenty-four years old. On March 3, 2005, he was working as a forklift driver for International Paper. He testified that his shift began at 5:00 a.m. and, while working, he felt "a little weak" and "exhausted." Those feelings passed, and he thought that he was all right so he continued to work. He was asked to work through his break, which he did. About one hour after he was scheduled to take a break,

around 4:45 p.m., he was operating a larger-size forklift with a seat approximately three to five feet from the ground. Hunter testified that the last thing he remembered was talking to a co-worker. The next thing he remembered was waking up on the floor with emergency personnel hovering over him. He testified he did not remember what happened or what caused his fall. As a result of the fall, Hunter suffered a right knee injury and significant injuries to his upper lip and teeth.

Hunter denied any episodes of passing out before or after the incident. He also testified that he was unaware of any medical condition that would make him dizzy or pass out. He did, however, admit to taking prescription anti-depressant medication for anxiety for two or three years leading up to the accident. At the time of the accident, he was taking Xanax and Wellbutrin and had been taking those two specific medications for several months. He testified that these medications had not made him pass out in the past.

Four co-workers of Hunter testified at the hearing. The first was Dusty Chidester who testified that he had been operating the forklift just prior to Hunter. He testified that he put the forklift in park before turning it over to Hunter. About ten or fifteen minutes later, Chidester saw Hunter lying on the ground, bleeding and shaking, about seven feet from the forklift. After the accident, Chidester noticed that the forklift was in a different position from where he left it, the forklift was in “forward,” and the parking break was not engaged.

Gary Austin testified that he saw Hunter lying on the ground bleeding, shaking, and jerking. Austin thought that Hunter had been operating the forklift only about five minutes

before the incident occurred. John Northrup testified that he first saw Hunter lying on the ground about six to eight feet from the forklift. He recalled that Hunter's body was jerking and that he was incoherent.

The final witness, John Romine, the plane-mill supervisor, testified that he first saw Hunter at the hospital where Hunter told him he did not know what had happened. Hunter told Romine that earlier in the day he felt weak and like he might pass out, but those feelings passed soon after.

Based on the foregoing testimony, the Administrative Law Judge held that Hunter proved by a preponderance of the evidence that he sustained compensable-unexplained injuries. The Commission affirmed and adopted the ALJ's opinion. International Paper's sole point on appeal is that there is a lack of substantial evidence supporting the Commission's opinion.

In determining the sufficiency of the evidence to sustain the findings of the Commission, we review the evidence in the light most favorable to the Commission's findings and affirm if they are supported by substantial evidence. *Little Rock Convention & Visitors Bur. v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* The question is not whether the evidence would have supported findings contrary to the ones made by the Commission; there may be substantial evidence to support the Commission's

decision even though we might have reached a different conclusion if we sat as the trier of fact or heard the case de novo. *Id.*

The Arkansas Supreme Court has distinguished injuries suffered from unexplained causes and injuries sustained from idiopathic causes:

We first note that injuries sustained due to an unexplained cause are different from injuries where the cause is idiopathic. An idiopathic fall is one whose cause is personal in nature, or peculiar to the individual. 1 LARSON, WORKERS' COMPENSATION LAW, §§ 12.11 (1998); *See also Kuhn v. Majestic Hotel*, 324 Ark. 21, 918 S.W.2d 158 (1996); *Little Rock Convention & Visitors Bur. v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997); *Moore v. Darling Store Fixtures*, 22 Ark. App. 21, 732 S.W.2d 496 (1987). Because an idiopathic fall is not related to employment, it is generally not compensable unless conditions related to employment contribute to the risk by placing the employee in a position, which increases the dangerous effect of the fall. LARSON, *supra*.

Whitten v. Edward Trucking/Corporate Solutions, 87 Ark. App. 112, 189 S.W.3d 82 (2004) (citing *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 71, 977 S.W.2d 212, 216 (1998)).

A workers' compensation claimant bears the burden of proving that his injury was the result of an accident that arose in the course of his employment, and that it grew out of, or resulted from the employment. *Whitten, supra*. "Arising out of the employment" refers to the origin or cause of the accident, while "in the course of the employment" refers to the time, place and circumstances under which the injury occurred. *Whitten*, 87 Ark. App. at 117, 189 S.W.3d at 85. When a truly unexplained fall occurs while the employee is on the job and performing the duties of his employment, the injury resulting therefrom is compensable. *Id.*

The facts in the case at bar are very similar to those in *Moore v. Darling Store Fixtures*, 22 Ark. App. 21, 732 S.W.2d 496 (1987). In *Moore*, the appellant, a forklift operator, fell at work. There were no witnesses to the fall. He was found unconscious on the floor by co-workers. Appellant testified that he was climbing onto the forklift, and the next thing he remembered was waking up at the hospital. There was testimony at the hearing that, prior to the fall, appellant suffered no heart problems, headaches, or dizzy spells.

The ALJ in *Moore* held that the appellant suffered an idiopathic fall and denied compensation. The Commission affirmed. On appeal, we reversed, holding that the Commission's decision was not supported by substantial evidence. There was no evidence, medical or otherwise, establishing that appellant suffered from a medical condition that could have caused the fall. Further, all the evidence demonstrated that appellant was working at the time of the fall. As such, we held that the facts left "no force or condition outside the employment from which the fall could have resulted," and that "appellant [had] met his burden of proving that his injury was the result of an accident that arose in the course of his employment and that it grew out of, or resulted from, the employment." *Moore*, 22 Ark. App. at 28, 732 S.W.2d at 500. *See also Little Rock Convention, supra*; (affirming Commission's opinion that claimant's fall was an unexplained and compensable injury where claimant had no prior health problems or conditions, and other theories as to the cause of the fall were speculative).

In contrast, in *Whitten, supra*, we affirmed the Commission’s decision that appellant suffered an idiopathic-noncompensable fall. In *Whitten*, appellant fell while walking up some stairs at work. While he contended he suffered a compensable-unexplained fall, we held that substantial evidence supported the Commission decision to the contrary because appellant had been diagnosed with three medical conditions—stroke, a herniated disc, and a compressive lesion on his spinal chord—any of which could have caused his fall.

We conclude that the instant case falls within the purview of the unexplained-injury cases similar to *Moore* and *Little Rock Convention*. The evidence presented demonstrates that Hunter was operating a forklift in the course and scope of his employment at the time of his accident. The evidence demonstrates that there was truly no explanation for Hunter’s fall and there were no witnesses to the fall. Further, in contrast to *Whitten*, Hunter was not diagnosed with any medical condition that could have caused the fall. The only evidence International Paper offered in support of its position that the fall was idiopathic was that Hunter was on the floor after his fall, jerking and shaking (seizure-like symptoms), along with its unsupported theory that perhaps Hunter’s anti-depressant medication was the cause of the fall. These theories are speculative at best.

Therefore, the evidence in this case “leaves no force or condition outside the employment from which the fall could have resulted,” and Hunter “has met his burden of proving that his injury was the result of an accident that arose in the course of his employment and that it grew out of, or resulted from, the employment.” *Moore*, 22 Ark. App.

at 28, 732 S.W.2d at 500. Accordingly, we hold that the Commission's decision is supported by substantial evidence and affirm.

Affirmed.

GLADWIN and MILLER, JJ., agree.